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S. 1420

To direct the Secretary of State to review the termination characterization of former members of the Department of State who were fired by reason of the sexual orientation of the official, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2017

Mr. CARDIN (for himself, Mr. MARKEY, Mr. MERKLEY, Mr. VAN HOLLEN, Mr. SCHATZ, Mr. BOOKER, Mr. KAINE, Ms. BALDWIN, Mr. COONS, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mr. WYDEN, Mrs. FEINSTEIN, Mr. MURPHY, Mrs. MURRAY, Mr. MENENDEZ, and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To direct the Secretary of State to review the termination characterization of former members of the Department of State who were fired by reason of the sexual orientation of the official, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lavender Offense Vic-
5 tim Exoneration Act of 2017” or the “LOVE Act of
6 2017”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) During the so-called “Lavender Scare”, at
4 least 1,000 people were wrongfully dismissed from
5 the Department of State for alleged homosexuality
6 during the 1950s and well into the 1960s.

7 (2) According to the Department of State’s Bu-
8 reau of Diplomatic Security, Department of State
9 employees were forced out of the Department on the
10 grounds that their sexual orientation ostensibly ren-
11 dered them vulnerable to blackmail and made them
12 security risks.

13 (3) In addition to those wrongfully dismissed,
14 many other patriotic Americans were prevented from
15 joining the Department due to a screening process
16 that was put in place to prevent the hiring of those
17 who, according to the findings of the Bureau of Dip-
18 lomatic Security, “seemed like they might be gay or
19 lesbian”.

20 (4) Congress bears a special measure of respon-
21 sibility as the Department’s actions were in part in
22 response to congressional investigations into “sex
23 perversion of Federal employees”, reports on the em-
24 ployment of “moral perverts by Government Agen-
25 cies”, hearings and pressure placed on the Depart-
26 ment through the appropriations process and con-

gressional complaints that Foggy Bottom was “rampant with homosexuals who were sympathetic to Communism and vulnerable to blackmail”.

(5) Between 1950 and 1969, the Department of State was required to report on the number of homosexuals fired each year as part of their annual appeals before Committees on Appropriations.

(6) Although the worst effects of the “Lavender Scare” are behind us, as recently as the early 1990s, the Department of State’s security office was investigating State personnel thought to be gay and driving them out of government service as “security risks”.

(7) In 1994, Secretary of State Warren Christopher issued a prohibition against discrimination in the Department of State, including that based on sexual orientation.

(8) In 1998, President William Jefferson Clinton signed Executive Order 13087 barring discrimination on the basis of sexual orientation.

(9) On January 9, 2017, Secretary of State John Kerry issued a statement regarding the “Lavender Scare”, saying, “On behalf of the Department, I apologize to those who were impacted by the practices of the past and reaffirm the Department’s

1 steadfast commitment to diversity and inclusion for
2 all our employees, including members of the LGBTI
3 community.”.

4 **SEC. 3. DIRECTOR GENERAL REVIEW.**

5 (a) REVIEW.—The Director General of the Foreign
6 Service and Director of Human Resources of the Depart-
7 ment of State, in consultation with the Historian of the
8 Department of State, shall review all employee termi-
9 nations that occurred after January 1, 1950, to determine
10 who was wrongfully terminated owing to their sexual ori-
11 entation, whether real or perceived.

12 (b) REPORT.—Not later than 270 days after the date
13 of the enactment of this Act, the Director General shall,
14 consistent with applicable privacy regulations, compile the
15 information compiled under subsection (a) in a publicly
16 available report. The report shall include historical state-
17 ments made by officials of the Department of State and
18 Congress encouraging and implementing policies and tac-
19 tics that led to the termination of employees due to their
20 sexual orientation.

21 **SEC. 4. REPORTS ON REVIEWS.**

22 (a) REVIEWS.—The Secretary of State shall conduct
23 reviews of the consistency and uniformity of the reviews
24 conducted by the Director General under section 3.

1 (b) REPORTS.—Not later than 270 days after the
2 date of the enactment of this Act, and annually thereafter
3 for 2 years, the Secretary shall submit to Congress a re-
4 port on the reviews conducted under section 3. Each re-
5 port shall include any comments or recommendations for
6 continued actions.

7 **SEC. 5. ESTABLISHMENT OF RECONCILIATION BOARD.**

8 (a) ESTABLISHMENT.—The Secretary of State shall
9 establish, within the Office of Civil Rights of the Depart-
10 ment of State, an independent Reconciliation Board to re-
11 view the reports released by the Director General of the
12 Foreign Service and Director of Human Services under
13 section 3(b).

14 (b) DUTIES.—The Reconciliation Board shall—

15 (1) consistent with applicable privacy regula-
16 tions, contact all employees found to be fired due to
17 the “Lavender Scare” or, in the case of deceased
18 former employees, the family members of the em-
19 ployees, to inform them that their termination from
20 the Department of State has been deemed inappro-
21 priate and that, if they wish, their employment
22 record can be changed to reflect these findings;

23 (2) designate a point of contact at a senior level
24 position within the Office of the Director General of
25 the Foreign Service and Director of Human Re-

sources to receive oral testimony of any employees or family members of deceased employees mentioned in the report who personally experienced discrimination and termination because of the actual or perceived sexual orientation in order that such testimony may serve as an official record of these discriminatory policies and their impact on United States lives; and

(3) provide an opportunity for any former employee not mentioned in the report to bring forth a grievance to the Board if they believe they were terminated due to their sexual orientation.

(c) REVIEW OF CLAIMS.—

(1) IN GENERAL.—The Board shall review each claim described in subsection (b) within 150 days of receiving the claim. Lack of paperwork may not be used as a basis for dismissing any claims.

(2) COOPERATION.—The Department of State shall be responsible for producing pertinent information regarding each claim to prove the employee was not wrongfully terminated.

(d) TERMINATION.—The Board shall terminate 5 years after the date of the enactment of this Act.

SEC. 6. ISSUANCE OF APOLOGY.

(a) FINDING.—Secretary of State Kerry delivered the following apology on January 9, 2017:

1 “Throughout my career, including as Secretary of
2 State, I have stood strongly in support of the LGBTI com-
3 munity, recognizing that respect for human rights must
4 include respect for all individuals. LGBTI employees serve
5 as proud members of the State Department and valued
6 colleagues dedicated to the service of our country. For the
7 last several years, the Department has pressed for the
8 families of LGBTI officers to have the same protections
9 overseas as families of other officers. In 2015, to further
10 promote LGBTI rights throughout the world, I appointed
11 the first ever Special Envoy for the Human Rights of
12 LGBTI Persons.

13 “In the past—as far back as the 1940s, but con-
14 tinuing for decades—the Department of State was among
15 many public and private employers that discriminated
16 against employees and job applicants on the basis of per-
17 ceived sexual orientation, forcing some employees to resign
18 or refusing to hire certain applicants in the first place.
19 These actions were wrong then, just as they would be
20 wrong today.

21 “On behalf of the Department, I apologize to those
22 who were impacted by the practices of the past and reaf-
23 firm the Department’s steadfast commitment to diversity
24 and inclusion for all our employees, including members of
25 the LGBTI community.”

1 (b) CONGRESSIONAL APOLOGY.—Congress hereby of-
2 fers a formal apology for its responsibility in encouraging
3 the “Lavender Scare” and similar policies at the Depart-
4 ment of State, as these policies were in part a response
5 to congressional investigations into “sex perversion of
6 Federal employees”, reports on the employment of “moral
7 perverts by Government Agencies”, and hearings or pres-
8 sure otherwise placed on the Department of State through
9 the appropriations process.

10 **SEC. 7. ESTABLISHMENT OF PERMANENT EXHIBIT ON THE**
11 **LAVENDER SCARE.**

12 (a) IN GENERAL.—The Secretary of State shall work
13 with the current public-private partnership associated with
14 the Department of State’s new United States Diplomacy
15 Center to establish a permanent exhibit on the “Lavender
16 Scare” in the museum to assure that the history of this
17 unfortunate episode is not brushed aside.

18 (b) SPECIFICATIONS.—The exhibit—

19 (1) shall be installed at the museum not later
20 than one year after the date of enactment of this
21 Act;

22 (2) should provide access to the reports com-
23 piled by the Director General of the Foreign Service
24 and Director of Human Resources under section
25 3(b); and

1 (3) shall readily display material gathered from
2 oral testimony received pursuant to section 5(b)(2)
3 from employees or family members of deceased em-
4 ployees who were subject to these discriminatory
5 policies during the “Lavender Scare”.

6 **SEC. 8. GUIDANCE ON ISSUING VISAS.**

7 To demonstrate the Department of State’s commit-
8 ment to ensuring fairness for current employees, not later
9 than 100 days after the date of the enactment of this Act,
10 the Secretary of State shall submit to Congress a report
11 on countries not issuing visas to the spouses of all Foreign
12 Service personnel posted overseas due to their sexual ori-
13 entation. This report shall include any comments or rec-
14 ommendations for actions, including eliminating visa reci-
15 procity with countries found to be instituting these prac-
16 tices against the spouses of Foreign Service personnel,
17 that will lead to ensuring that all spouses of Foreign Serv-
18 ice personnel receive visas for the country their spouse is
19 assigned, regardless of sexual orientation.

20 **SEC. 9. ESTABLISHMENT OF ADVANCEMENT BOARD.**

21 (a) ESTABLISHMENT.—The Secretary of State shall
22 establish, within the Office of the Director General of the
23 Department of State, a board comprised of senior-level of-
24 ficials to address the issues faced by LGBTQI Foreign
25 Service employees and their families.

1 (b) HEARING OF TESTIMONY.—The Advancement
2 Board shall hear testimony from any willing LGBTQI
3 Foreign Service employees and their families regarding
4 any discrimination they have faced due to their sexual ori-
5 entation.

6 (c) REPORT.—

7 (1) IN GENERAL.—Not later than 100 days
8 after completing collection of testimony described
9 under subsection (b), and annually thereafter for 5
10 years, the Advancement Board shall submit to Con-
11 gress a report based on the testimony.

12 (2) CONTENT.—The report required under
13 paragraph (1) shall include any comments or rec-
14 ommendations for continued actions to improve the
15 Department of State to ensure that no employee or
16 their family members experience discrimination due
17 to their sexual orientation.

18 (3) PRIVACY.—The report required under para-
19 graph (1) shall remain private and will only be ac-
20 cessible to Members of Congress, their appropriate
21 staff, and members of the Advancement Board.

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